

Service Date: November 15, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Investigation of)	UTILITY DIVISION
Wilder Resorts, Inc., d/b/a Fairmont Hot Springs)	
Resort, Compliance with Public Utility Obligation)	DOCKET NO. D99.4.86
To File Tariffs for Water Service to its Customers)	ORDER NO. 6162c

PROTECTIVE ORDER

On October 29, 1999, Wilder Resorts, Inc., d/b/a Fairmont Hot Springs Resort (Fairmont), filed with the Montana Public Service Commission (Commission) a Motion for Protective Order to govern access to and distribution of certain information requested through discovery (data requests) or otherwise required or filed in the above-entitled proceeding. Fairmont requests protection of audited financial statements of the closely held corporation and Fairmont's payroll information. The grounds for the request are that the audited financial statements contain information that could cost Fairmont its competitive edge, and the payroll information in the small community should be protected for personal privacy.

The Commission determines that it will treat this information as confidential and subject to protection from public disclosure pursuant to § 69-3-105, MCA. Fairmont has already released these data responses with the understanding that the intervenors will protect the information as requested until this order is issued. The Commission cautions that Fairmont should use care in categorizing information as proprietary and in ensuring that Fairmont does not use this provision to unreasonably restrict access to information. The Commission grants Fairmont's request and hereby orders that proprietary information submitted in accordance with this Order be treated as "confidential" under the terms of this Order. It is further ordered that the following Protective Order provisions shall be in effect:

1. (a) Confidential Information. "Confidential Information" is considered to be trade secret, confidential, or privileged commercial and financial information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission

order, that are claimed to be Confidential Information shall be furnished pursuant to the terms of this Order. All persons accorded access pursuant to this Order shall neither use nor disclose the Confidential Information except for the purpose of this proceeding, and solely in accordance with this Order. All material claimed to be Confidential Information must be submitted on yellow paper and so marked by the party or affiliate by stamping the same with a designation indicating its trade secret, proprietary, or confidential nature.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding. However, counsel may authorize access to any specific Confidential Information, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Such experts may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary, or affiliate. Any member of the Commission, and any member of its staff, the Montana Consumer Counsel, and any member of its staff may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order.

(c) Nondisclosure Agreement. Before giving access to Confidential Information as contemplated in paragraph 1(b) above to any expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person. Before disclosure, such person shall agree in writing to comply with and be bound by this Order. No person will have access to Confidential Information who has not signed a nondisclosure agreement in the form attached and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") requires all persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and consent to be bound by its terms. The agreement contains the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to the Commission and counsel for the providing party.

(d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be

made available for inspection and reviewed by counsel and experts as defined in paragraph 1(a)-(c) in a place and a time mutually agreed on by the parties, or as directed by the Commission.

2. Challenge to Confidentiality.

(a) This Order establishes a procedure for the expeditious handling of information that a party claims is confidential. It shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) If the parties are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential, or privileged commercial and financial information, the party objecting to the trade secret claim shall submit the said matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether any documents, data, information, studies, or other matters submitted to it for review and determination are Confidential Information, the Commission shall enter an order resolving the issue.

(c) Any party at any time upon ten (10) days notice may file an appropriate pleading to have removed from the protective requirements of this Order or from the sealed record and placed in the public record any documents designated as Confidential Information or accepted into the sealed record in accordance with this Order. Upon a challenge of the confidential or proprietary nature of this information, a hearing examiner or the Commission will resolve the issue after proceedings in camera, in which only persons duly authorized under this Order to have access to such confidential matter may be present. The record of in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D99.4.86" and may be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission. The transcribed record must be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, without a release, either by agreement of the parties or pursuant to an Order of the Hearing Examiner or the Commission, after notice to the parties and hearing. At the request of the providing party, after a ruling by the Hearing Examiner or the Commission that removes information from the protection of this Order or the sealed record, the parties shall not disclose such information or use it in the public record for five (5) business days, to enable the providing party to seek a stay or other relief.

3. Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D99.4.86," and due to their trade secret nature they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

4. Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other non-confidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed an Exhibit "A." All protection afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (a) Use in Decisions and Orders. The Hearing Examiner or the Commission will refer to Confidential Information in only a general or summary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information other than in a general or summary form, it shall be placed in a separate section of the Order or decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary of Proprietary Information. When material filed with the Commission pursuant to this Order is considered to be Confidential Information, the provider shall concurrently file a brief non-proprietary written summary of the Confidential Information. If deemed necessary by the Commission, the provider shall prepare a written summary of the Confidential Information referred to in a Commission decision or Order, for placement in the public record.

6. Segregation of Files. The Commission will seal all Confidential Information, segregate it in its files, and withhold it from inspection by any person not bound by the terms of this Order. The Confidential Information may be released from the restrictions of this Order by agreement of the parties, by an Order of the Commission, after notice to the parties and hearing, or by a final order of a Court having jurisdiction. The Office of Montana Consumer Counsel

may retain all written Confidential Information obtained under this Order in its office files. The Montana Consumer Counsel must withhold this information from inspection by others, except for the staff and experts, unless released by agreement of the parties, by a Commission order, or by a final order of a court under this paragraph, subject to the terms of paragraph 7 of this Order.

7. Preservation of Confidentiality. All persons afforded access to any Confidential Information by reason of this Order must neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than preparation for and conduct of this proceeding, and then solely as contemplated in this Order. Such persons shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

8. Reservation of Rights. The parties subject to the terms of this Protective Order retain the right to question, challenge, and object to the admissibility of any data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information, or cross-examination on the grounds of relevancy or materiality.

This Order does not constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

Done and dated this 1st day of November, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chair

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in Wilder Resorts, Inc. dba Fairmont Hot Springs Resort, Docket No. D99.4.86 dated November 1, 1999 and agree to be bound by the terms and conditions of such order.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date